In the United States District Court

In And For The Southern District of Florida

Tampa Division

DIGNA BARRIOS, As Administratrix of the Estate of MARIO BARRIOS, Deceased,

Plaintiff

v.

WATERMAN STEAMSHIP CORPORATION,

Defendant

No. 3723 - Civ-T

FILED.
TAMPA, FLA.
May 25, 1960

JULIAN A. BLAKE
CLERK

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL JUDGMENT

This cause came on for final hearing, and the Court, after considering the pleadings, the evidence, and argument of counsel, being fully advised in the premises, makes the following Findings of Fact, Conclusions of Law and Final Judgment:

1. DIGNA BARRIOS, as Administratrix of the Estate of MARIO BARRIOS, deceased, brought this action as Plaintiff against WATERMAN STEAMSHIP CORPORATION, as owner and operator of the vessel, SS TOPA TOPA, alleging that the death of MARIO BARRIOS, as a result of falling from the vessel, was proximately caused by and through the negligence of the Defendant, WATERMAN STEAMSHIP CORPORATION.

2. The Defendant, answering said Complaint, denied any negligence on its behalf and asserted that as a defense that the death of MARIO BARRIOS was occasioned by his own contributory negligence.

3. On December 18, 1957, the SS TOPA TOPA, owned and operated by WATERMAN STEAMSHIP CORPORATION, Defendant, departed Yokohama, Japan at approximately 0010 hours.

4. The deceased, MARIO BARRIOS, Ordinary Seaman, crewman on the SS TOPA TOPA, was assigned the bow watch on said vessel from 0000 hours to 0400 hours. At approximately 0230 hours, Crewman Sintes relieved MARIO BARRIOS at his watch on the bow so that he might have coffee. BARRIOS returned to his station as watch on the bow of the SS TOPA TOPA at approximately 0255 hours and was not seen thereafter.

5. At approximately 0335 hours, Crewman Farnham went to the bow of the SS TOPA TOPA to relieve MARIO BARRIOS but did ot find him at his watch. Thinking that BARRIOS had gone for coffee or to secure additional clothing, Farnham took over the bow watch until relieved at approximately 0400 hours by the next watch.

6. The weather upon departing Yokohoma, Japan was good. At approximately 0233 hours, the SS TOPA TOPA encountered rain and smog. At approximately 0400 hours, rain, moderate seas and swells were encountered although visibility had cleared. At 0649 hours, gale force winds and low visibility were encountered.

7. At approximately 0835 hours, the Master of the SS TOPA TOPA, Captain Wallace Royal, was notified by the Chief Mate that Seaman MARIO BARRIOS could not be found. A search party was immediately organized and searched the vessel for MARIO BARRIOS as well as

any evidence of foul play, until approximately 1200 hours on December 18, 1957. An urgent message was sent, after it had been ascertained that BARRIOS was not aboard the SS TOPA TOPA, to the Japanese Safety Agency, advising of the disappearance of BARRIOS and the location of the vessel when BARRIOS was last seen at approximately 0255 hours.

CONCLUSION OF LAW

1. The Court has jurisdiction of the parties and the subject matter of this suit.

2. The plaintiff failed to establish by a preponderance of the evidence, that the Defendant was guilty of any negligence proximately causing the death of the deceased, MARIO BARRIOS.

FINAL JUDGMENT

It is, therefore, ORDERED, ADJUDGED and DECREED as follows:

1. The Plaintiff, DIGNA BARRIOS, as Administratrix of the Estate of MARIO BARRIOS, deceased, recover nothing in this action and that judgment be entered for Defendant, WATERMAN STEAMSHIP CORPORATION; and that it go hence without day. Defendant, WATERMAN STEAMSHIP CORPORATION, have and recover of the Plaintiff, DIGNA BARRIOS, as Administratrix of the Estate of MARIO BARRIOS, deceased, its taxable costs in this cause.

DONE and ORDERED in Chambers, at Tampa, Florida, this 25th day of May, 1960.

/s/ GEORGE W. WHITEHURST
UNITED STATES DISTRICT JUDGE